

LAKE COUNTY BOARD of ADJUSTMENT
February 13, 2013
Lake County Courthouse Large Conference Room (Rm 317)
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, Sue Laverty, Mike Marchetti, Tim McGinnis, Paul Grinde

STAFF PRESENT: Joel Nelson, LaDana Hintz, Robert Costa, Lita Fonda

Mike Marchetti called the meeting to order at 4:00 pm

Motion made by Mike Marchetti, and seconded by Sue Laverty, to approve the January 9, 2013 minutes as written. Motion carried, 4 in favor (Paul Grinde, Clarence Brazil, Sue Laverty, Mike Marchetti) and one abstained (Tim McGinnis).

PETERSEN FAMILY TRUST/ KASSON VARIANCE REQUEST

LaDana Hintz presented the staff report. (See attachments to minutes in the Feb. 2013 meeting file for staff report.) On pg. 12 at the end of item #4, Sue asked if the existing lot coverage extending onto the lot from the adjacent lot's asphalt driveway was an encroachment and LaDana confirmed. Hans Lund said it was a shared driveway on the plat. LaDana explained that a sliver of the neighbor's driveway was on this lot. She didn't know the exact amount of the coverage. The Breviks lived 3 properties to the north. They came in and spoke with LaDana. They mentioned water flowed in those coulees in the last couple of years, with an especially significant amount in 2010 and 2011 when we had a lot of rainfall. There was water that flowed through there, so you definitely didn't want to close those off. LaDana continued with the staff report.

Tim referred to #5 on pg. 12. He didn't think the applicants would find this impractical to fill and grade to change the slope. LaDana said you wouldn't want to fill active drainage. Tim said they could put in a culvert. LaDana thought that would need to be part of an engineered plan. Tim thought it was an easy option. He checked that the slumping problem in #10 on pg. 13 was without an engineered plan. LaDana replied that the engineered plan was the outcome from that discussion. Tim asked there wouldn't be slumping problems with an engineered plan. LaDana replied that at least it would be reviewed and hopefully an engineer would design something that would mitigate that. Tim said the engineer would take the heat for it if it slumped. LaDana said otherwise they would need to be located 10 feet from the slope. Paul said he understood the house next door was engineered with that in mind. LaDana explained it wasn't the house she heard about. There was slumping down by the lake.

Mike referred to item #7 on pg. 12. Were there lots similar to this one? LaDana explained the difference was those lots had large flat areas, with the slope located closer to the lake in a strip. Mike asked if there were similar lots in this area where they had a larger building area than the 5%. Paul thought the house next door was very similar. LaDana explained that they had a flatter lot. Paul said it shared the same plateau, and he

assumed they just had more of it. Joel pointed out the lot in question had the coulee running through it. Paul thought the neighboring lot had half of a coulee. LaDana said the coulee was actually on the next lot. They were having problems getting that one through DEQ review. When she ran numbers on it so someone could see if he could develop it to take to DEQ, it would be allowed something like 453 square feet. That was much worse than this lot. Tim said this lot did have a flat spot. They were looking at it because it was the average of the gulley and the flat spot.

Mike confirmed with LaDana that 10% was what the owners chose to request.

Hans Lund spoke on behalf of the applicants. He built houses in the city on sloped lots. This was the first time he'd had problems getting lot coverage. He wanted to get lot coverage nailed down prior to doing zoning conformance, so he'd know what to submit for plans. He thought it was a constant problem with impervious surface coverage and stormwater management next to the lake. He said the City had an addendum to the Polson Development Code in the city, where if you had plans that were engineered and signed by a licensed engineer, you could bump up one on the scale. He had a note from Joyce Weaver, the City Planner, that the City still did this. He handed one copy of this to the Board and staff. (See attachment to minutes in the Feb. 2013 meeting file for the handout.) If this was in the City, he would be allowed 11,761 square feet of lot coverage, 20% of the lot. For the City, if you had a licensed engineer design and engineer the house foundation and geotech for the soil conditions, then they'd allow you more lot coverage because you're going to that expense and mitigating the problem. You wouldn't build a house on too much slope with too much stormwater so there's a risk of the house sliding into the lake or having slope issues. He said that was accepted by the City currently. He thought if the Polson Development Code was being followed, that this would apply and he wouldn't need a variance.

Mike thought since a new document had been handed to the Board, it was fair game to ask questions. Tim checked that the County hadn't adopted this. Hans said this had been in effect since 2002. LaDana said the County adopted the regulations, but hadn't adopted this part. Lita asked to speak. [Editor's note: She worked at the City for the Building and Planning Dept in 2002.] This was something that Joyce Weaver did within the City. It wasn't a formal change to the Polson Development Code. Hans said part of their hardship was that they weren't within the City. They were part of the County and the County didn't recognize the fact that they were allowed these engineered plans to bump up one on the scale. He chose to request 10% because the next scale up would be 15% and he thought a happy medium would be to ask for the 5886 rather than asking for 8820. The County told him they were allowed 5% of the lot coverage so he thought it be a reasonable amount to ask for 5886. If they did stormwater meditation and got an engineer, he didn't see that as being a lot [of coverage]. The house next door, the Strosahls, had 7300 square feet of lot coverage, per the tax records. The square footage on the main house was still only 2200 square feet. The home that was two doors down had 5600 square feet of coverage. The Breviks had 7849 square feet of lot coverage. They were 3 doors down. He didn't think asking for 5886 was asking for that much, and fit into the subdivision. He thought if they were held to the 2900 and the house they proposed was only 800 square

feet, that they would be devaluing the neighbors' houses. The house next door was 2200 square feet. These were \$40,000 lake lots. He said you were harming the neighbor by building a small house on a lot that would justify a large home. The neighbor homes were fairly large.

Hans added the drainfield was located off site across the road, and he thought a lot of the lot coverage scales were built on containing drainfields on the lot. The other homeowners did have drainfields on their actual property. That should give them more leeway for lot coverage. He referred to the Strosahl house next door with 7000 square feet of coverage. It shared the same bench. In his opinion, the only difference between the two lots was the coulee on the far south side of the lot on which he was looking to build a home. If the property line was moved over 50 feet or so to get the coulee off the property, then they'd be dealing with the same two lots and bringing the scale up to normal. It was almost a hindrance that the lot was as large as it was. It was bigger than the lots next door.

Sue asked if he was talking about subdividing the lot. Hans clarified that if they were to do a boundary line adjustment and move the lot line, they would get more lot coverage, so with a smaller lot they'd get a bigger house. He said that was another reason the Polson City Development Code gave a variance to where if you got it engineered you would be allowed to build a larger house with more lot coverage because every lot wasn't as cookie cutter. This particular lot had hardship because of the coulee on the lot. It was bigger than the other lots and included the coulee and slope coverage, even though it had the same flat bench as the neighboring lots. He'd be building a house almost the same as the Strosahls. It was almost in the same spot on the bench. It would be a smaller house. They were proposing a 1900 square foot house and that one was 2200 square feet. They had the same topography out front. It almost matched.

Hans guessed that the hardship was pertinent judicial decisions; literal enforcement of the existing zoning regulations would result in unnecessary hardship. He felt that hardship was being imposed by the County for not adopting the extra addition to the Development Code that the City had adopted for over ten years. [Editor's note: There was no such revision adopted to the Polson Development Code.] He didn't feel like it was a big deal to do the fill. He pointed to what Wal-Mart did. You just smashed it and pushed it forward as much as you wanted and dropped the grade down 3 or 4 feet. By saying that the owner could buy a different lot, it wasn't that easy. There were few empty lots that close to Polson on Rocky Point especially, which was probably why this was one of the last lots to be built upon. It was one of the last empty lots. For an older couple to be close to town and have a place on the lake, he didn't know if there was another one for sale on that whole stretch that you could place it with. They were building on the lots that hadn't been built on yet, and so they were having extra conditions to comply with. That was why he felt they could get the house engineered and work with the lot to allow the house. He saw this as a good project. He didn't think it was self-imposed for the owner. The variance process was here so they could request building a house bigger than just what the zoning said. They were here to work with the Planning Dept. rather than just clearing the lot with a bulldozer and applying for a zoning conformance permit.

Mike asked if they could pull back the variance request to the minimum amount of square footage they actually needed to do their plan. Right now they went beyond that. He gave the example of 4241 square feet plus the 500 square feet from the encroachment. That would sit at 4741 square feet. That would comply with the one minimum. LaDana clarified that after the staff report was distributed, she received another email with an updated site plan that had reduced coverage. Hans said they were working on the house plan now and didn't have something set in stone. That was why he didn't apply for a zoning conformance permit. He wanted to establish what they had to work with for impervious surface coverage. LaDana said one plan called for 3087 for the house, [inaudible] garage and 377 for a deck. It was even reduced beyond what the Board would be approving if it was scaled back as suggested. She thought they needed a locked in plan before the Board could settle on a number. Mike agreed. He was trying to come up with facts so they could say they could approve this. He didn't want to say no. To say yes, he had to try to meet the law as much as they could. He understood that the property was a little strange. From the plans he had, it seemed like they were trying to do it on the flat part and keep it within the flat part and not encroaching.

Hans guessed that some of the grey area in the coverage was if they wanted to do a paved driveway. The others along there had paved driveways. The Strosahls had 1440 feet for their driveway. The Holms had 960 square feet of concrete. The Breviks had 3266 square feet of concrete. He thought paved driveways were a good thing so you could control stormwater rather than having runoff with mud, but then it had to be counted in the impervious surface coverage allowed by the County.

LaDana pointed out that if they were going to use the City standards for slopes, then they might as well use the City standards for impervious surface coverage, and the City called gravel impervious coverage. That meant they should count the driveway if they decide to count the slopes, too. They hadn't accounted for that. [Editor's note: This refers to another City item in the same vein as the slope/lot coverage item, and was also not a Code amendment adopted through the formal amendment process.] Joel noted that they had to use the County-adopted Polson Development Code, regardless. LaDana agreed. She mentioned that if they started to use a portion of the City stuff then they should use all of the City stuff, which was not what they adopted. Joel said [inaudible] about one part of the Code and how the City did it differently, let's see how the City did it differently as a whole, and this [project] would be way over the 10% lot coverage.

Mike understood the points they were making. He was just trying to weigh the different things before them. They had a lot that was a little bit different. They had the coulees that changed the slope, so they were now down to 5%. They had a buildable area, but they had gone past the maximum allowable lot coverage because of the slopes and the condition that's placed on this property. If the Board was going to go contrary to what the staff recommended, then they had to find a reason why. If they couldn't find a reason why, then they would side with staff. LaDana reminded that they would have to go through the findings. Mike agreed.

LaDana noted that Hans talked about moving the lot line on the southern boundary. Potentially that could hinder the neighbor's lot because when that came into review under the boundary line adjustment, they would look at the neighbor's lot coverage and it could really impact that lot coverage. It wasn't just a matter of moving a boundary line. The neighbor still had to be in compliance with the zoning also. Tim suggested he could just give it away. There were a lot of things you could do. He thought the point was that if you had a lot you made smaller and build more on it, something was wrong with the way that you're measuring it. He said the City decided one way to deal with this was with the engineered thing because this average [inaudible] slope/ lot slope didn't work very well. He thought that was what Hans was pointing out, not that he wanted to do a boundary line adjustment.

LaDana said this typically wasn't an issue. Joel couldn't recall one like this previously. Tim said that was why you had a Board of Adjustment. Joel said they couldn't make the lot much smaller because there was a one-acre minimum lot size in RRZD. The lot was 1.35 acres. Tim asked what would happen if .35 of slope was taken out. LaDana asked what they would do with it. Paul suggested giving it to the County. Clarence suggested making a park area. Someone suggested pheasant habitat. LaDana noted that would have to go through subdivision review and both lots would have to be an acre. Tim said that was beside the point. His other point was he thought the applicants could fill that up. If you looked at what looked cool out in that flat area, it was the fact that it did have those little draws. He didn't want it filled up. LaDana said if he did fill it, it took away the wildlife habitat, which was discussed in subdivision review so he couldn't do that.

Hans mentioned the best use of the lot. He felt the house wouldn't hurt the community and would go right along with the houses next door. He wasn't asking for overreaching bounds of lot coverage. He was asking for a 1900 square foot house with a 3-car garage, which mimicked the other 3 houses that were already built in the Vista Shore subdivision. He talked about the money he thought the building of the house would involve locally for a house that would match the neighbor's house. If he was inside the city limits, he'd already be building.

Public comment opened:

Diana Luke: She worked for Carstens Surveying. They were hired to complete the MDEQ approval. She offered to answer questions about that.

Public comment closed.

Paul agreed with Tim that if you could make a lot smaller and could build a bigger house that didn't make sense. In the spirit of complying with minimum relief (item e, pg. 17), he said to go with the submitted plan and grant a variance for that, plus the driveway overrun. If the applicants wanted to build something else, then they could submit something else or take it back and show the Board what was going to be in that 5880 or whatever.

Sue thought the City thing was totally irrelevant to what was going on here. It didn't matter what the City did. This was in the County. You could come to the Board in every situation and say that if you weren't in a zoned area, you could do what you wanted. She didn't think it should be under consideration. Tim thought it was relevant because the City dealt with this on a regular basis, where the average slope lot coverage didn't work so what the City decided to do what they did. This was City zoning. It was City-written zoning, and they were the ones who dealt with it. Because the average slope figure didn't work very well, that was what they devised to do. Sue asked why the County hadn't adopted it, if it was under County jurisdiction. Tim said it was City zoning. It was RRZD. That was Polson Development Code. [Editor's note: Neither RRZD nor PLZD zoning subdistricts are allowed into the City. These two districts are administered solely by the County. The Polson Development Code was adopted by both the City and County in 1994 at which time the County covered administration of the Code for the City. The City took over administration within its boundaries around 1998.] Sue asked what this was. Tim said that was what the City had decided because the County didn't deal with it very much. There wasn't a lot in the donut area, particularly that was an issue like this. The City had a lot of these issues with slope coverage. Sue replied the City had issues in their jurisdiction. Tim said that was because of the way the Polson Development Code was written. Tim and Sue agreed that [the applicant] was under obligation of the Polson Development Code, RRZD and their performance standards. Tim said the City figured out their performance standard didn't work very well. That was the mechanism they enabled themselves to do because. Sue said that Tim was missing her point. This particular parcel didn't fall under this.

Mike said Sue was right. The City didn't have jurisdiction over the County and the County's law. It did set precedence that the Board could adopt for their decisions that another condition would have to be met for inclusion of an engineered plan prior to the actual allowance of the permit for building the home. They could put that condition in here, if the Board wanted to move forward to approve this.

Joel was curious what kind of lot sizes the City was dealing with. Those might not be one and a half acre lots. They might be 7000 square foot lots in LRZD. Hans responded the last one he worked on was on Bay Point Lane, and it was over an acre. That was where they had an issue. Pretty much every lot in the City around the bay had that 40-foot drop. That was the Crandall's property out at the golf course.

Sue agreed with Mike that she didn't like the open-ended thing and that it was much more reasonable to nail it down to what was in front of them, and it would be the minimum for the variance request. Hans said the extra 1600 he asked for above the 4200 would allow them to pave the driveway with the Strosahls because they did have a shared approach from Rocky Point Road. On the DEQ report, maybe they showed this. The Strosahl side was already paved and his client would like to pave his driveway as well to match the neighbor's because they did share an approach. LaDana asked how much that would be. Hans said if they went to the 5800 that would allow him 1600 square feet. He thought they already had 1440 at Strosahls' so it would be almost the same. LaDana asked if there was a hardship by not paving your driveway. Hans said for stormwater, stormwater

drainage and retention and not having silt runoff, it would almost be a plus for water quality and the lake. If you had a gravel driveway, you'd have mud running in. He liked paved driveways, where you could retain the water and you could get the water into a drain or a retention swale and do some groundwater retention and keep it from running off into the lake. It would be part of the stormwater management plan and would incorporate the driveway. It was better than mitigating stormwater.

LaDana said you had to draw the line somewhere. The applicants had changed plans. They were asking the Board to give them 4200 square feet. She had a plan in front of her now that called for 3500 square feet. Then they asked for more, but the applicants didn't have a nailed down plan on which the Board could work. Hans said he wasn't asking for more. He was asking for the 5886. LaDana pointed out that the plan that he gave her showed her that they could do 3400 square feet. Hans said if they paved the driveway, they'd be at 5886. That was still 2000 square feet less than the neighbors. LaDana replied that the neighbor had a different lot. Hans' lot had different constraints than theirs. The precedent set tonight would be what went on into the future. Hans said it was just for this lot. LaDana said no, the next time when someone else came in and wanted the same thing, what would they tell them? Tim said if they could make their lot smaller and build a bigger house, he'd probably say the same thing. LaDana said that was what they were looking at. They weren't just looking at what they were doing here for the applicants tonight, they were looking at how this would affect in the future. Hans said that apparently for the last 3 people, there was no problem.

LaDana reiterated that those people had different constraints on their lot. Hans asked if those houses were engineered. LaDana didn't know. She hadn't permitted them. She permitted Holm and his son engineered it with substantial engineering. Joel pointed out that they didn't require a variance. LaDana further noted that they didn't ask for this variance, nor had others. Mike said that the lot next door was less than 8% so they were allowed 11,000. He thought they were only at 7,000 something. That was why the applicants were here. LaDana said she didn't know what the neighbors' lots were. She didn't look at their lot coverage. Mike said he was going off what he was hearing. LaDana explained that also often people paved their driveways, and it wasn't necessarily put in the applications so then there was additional coverage added that staff hadn't reviewed and that wasn't necessarily approved. Hans said that he was saying that [the paving] would be permitted. He was sticking to the 10%, which he felt was halfway to the next scale up. He thought there were unique restrictions on the lot. If you made the lot smaller, he could probably do exactly what he was asking for without [inaudible] the zoning, just like the neighbors did. This lot had the extra coulee, which created the high percentage slope. Mike referred to putting fill in the coulee to raise it up. Hans said you could drop the whole lot down 4 feet and push it out to the 50-foot line and do a vertical rock wall to the lake, and there was their coverage. They were fine, with a flat lot at that point. The slope would only be 4 feet. LaDana said you couldn't change within the 50-foot zone. Hans said they could do a vertical wall right up to it though. It was better to allow a variance and be like the neighborhood and match the neighbors.

Joel suggested they should focus on the findings and the criteria. Mike agreed. LaDana reminded the Board that they would have to write finding if they were to approve it.

Clarence thought if you could make the lot smaller and build, he didn't see why you couldn't say that it was okay. He could put a fence there and dedicate that coulee as parkland and wildlife habitat or whatever and build what he wanted. Joel explained that it wouldn't be that easy to make the lot smaller. You could only go down to an acre, and the other lot would have to be an acre as well. Then you would have to take it through subdivision review or an exemption. They would have to come back to this Board for a variance. LaDana described that there was a condition of subdivision approval that said no lot could be divided further. Clarence said it still didn't make sense that if he could throw away that piece of the lot, that he could build whatever he wanted. Joel asked if they'd actually crunched those numbers. Clarence said he was taking [Hans'] word for it, so he'd see what Joel had to say about that.

Joel said you wouldn't be able to dump all of the slopes regardless of what you did to make the lot smaller. Hans said if you rid the lot of the coulee, it neared the other lots permitted for over 7,000 feet of coverage. He was hoping they'd brought the other permits to see how and what their average slopes were. LaDana said she could tell by looking at it that they weren't comparable to this. Hans said they had the same drop. They shared the bench with Strosahl. It was exactly the same. LaDana described how the topography was different. On the other lots, [the slope] was only out by the lake, and then they had a big flat area covering $\frac{3}{4}$ or more of the lot. This lot had a little corner. That was the difference. Hans said you could flip Strosahl's house and fit it on the flat spot on this lot. LaDana said it might be able to fit on there, but they had more of a flat area. Hans said 5% or so, if you got rid of the coulee. LaDana explained that the slope on the other lots was just in one area or strip. This one wound around. Mike said the Code talked about average slope on the property itself and that was where the contention was. Tim said it was an issue, and it wasn't a good thing the way the performance standard was. Hans said the minutes explained how the City amended their [inaudible]. He guessed it was an amendment that wasn't recognized in the plan. They spelled out in the minutes of 2002 that they had so many going to the Planning Board, it was a \$400 fee, and it took up people's time. They did the amendment so they didn't have the process of constantly going to the Board to get a variance for the average slope because there were so many hillside lots in the City of Polson.

Mike said that was understandable, but they still had to deal with the regulations that they had to deal with. Hans said again that this was a unique lot. He was here to ask for a variance to ask to be able to build a like house as the other neighbors. Mike thought they understood his point. They were trying to figure out how to make the point work or not. They had a suggestion to go back through the findings and verify whether they believed the findings actually supported or denied this, and whether the findings were something they could accept. He thought the Board could discuss each one and see how they stood on each one.

Mike began with finding a (pg. 16) where the need for the variance resulted from physical limitations to the lot or parcel to which the variance was requested. He read the written finding. Paul said the lot certainly had physical limitations that were unique to it, which supported variance. Clarence said it didn't totally restrict the ability to develop in compliance, but it didn't say that they could build a house that looked similar to the neighbors' or the same kind of house as the neighbors'. Mike said the uniqueness of the lot did not preclude the building of a home. It precluded building a home beyond a certain size. To buy this lot and say 'I want to build something bigger' was saying that 'I'm actually creating the issue'. The lot was already there and already had the rules around it. The Board would have to decide something here on whether this was a limitation created, perceived or natural to the lot. Tim thought it did because he thought it was a reasonable development of the lot. If he had to build a 2-room cabin on there, from an appraiser's standpoint, this didn't work on a lake lot, if he spent \$400,000 or whatever on a lake lot. It wasn't what you did. It wasn't a reasonable use of the lot to build what the Code allowed.

Joel noted it was allowed 2933 square feet of lot coverage. Tim responded that if you had a house, garage and driveway, it was a [inaudible] house. Joel said you could potentially do a 3-story house, which would be conceivably 9000 square feet of living area that could conceivably fit. Hans said it would be 2400 square feet on 3 levels. That would be 40 x 26, which would be about 824 per floor, if you did that 3 tall and you'd lose the staircases. It wasn't a viable lot for a senior. His clients were older. They didn't want a 3-story house. Clarence suggested an elevator. Someone asked if the proposed house was one-level house. Hans said it had a walk-out basement. Currently people wanted everything on one floor. The basement was for the kids when they came to visit.

Joel asked how many square feet of living area Hans was looking at. Hans replied 1940. Joel checked that was 3800 square feet with a 3-car garage and Hans confirmed. Tim said that was your typical lake house. Hans said 1800 to 2200 square feet of [inaudible] was kind of the average house around Polson now. He reported that Strosahls' [house] was 2200 on the main floor and Holms' was 2381 and Breviks' was 2927. Sue asked what the square footage of the garage was. Hans replied it was 1008.

Tim felt on finding a, that due to the subject physical limitations, you couldn't reasonably build on the lot. Mike said he was blending a and b together. Finding b talked about reasonable use. Paul agreed with Tim. He thought you didn't buy a lot like that and put a small home on it. If you did 3 stories, the people who could afford that were usually retired and wanted one level. Mike restated that if finding a was held in strict compliance, they would then force the building of a structure on this lot that would not be in keeping with the general neighborhood and the properties around them. It would either lower values or lower the perception of that zoning or area. How did you write that? You had to support it.

Clarence said Hans was saying he could bring a bulldozer in there and just flatten that lot out. Was he allowed to do that? In some of the other zoning districts, they had to get permission to move dirt and so forth. Hans believed that in the Polson Development

Code, there was no need for a permit to do grading or gardening or dirt-moving activities. There were some restrictions, like in Finley Point Zoning where you couldn't touch them. Mike said they were in the County, so it was subdivision approval. He would actually vote no immediately if Hans was saying he was going to fill this in. This was natural habitat and something that needed to stay. The Board needed to find a way to help him, if possible.

Sue asked about a modification to finding a. They might keep the whole first paragraph and add that it didn't totally restrict the ability to develop the parcel in compliance with the regulations, however it wasn't in keeping with the surrounding neighborhood or else with the level of the surrounding neighborhood. Would that be a finding of fact? Tim agreed. Clarence thought so, and said they were obligated to try to keep the neighborhood the same, where it didn't change the neighborhood. Mike asked her to restate it. She restated an addition. It was definitely a limitation of the lot, and it was limited through the topography, and while it didn't totally restrict the ability to develop the parcel in compliance with the regulation, it would not be in keeping with the surrounding area, should this variance not be approved. She was trying to tie this back to the Board's duties. Mike reiterated that Sue was suggesting they modify the last sentence at the end, by adding 'however it would not be in keeping with the surrounding neighborhood'. Sue confirmed. She noted their duty was to promote the health, safety and general welfare of the people of that neighborhood. Wouldn't this fall into that? It might be a big stretch there. It would be basically be turning finding a to a positive. Clarence said you could say it could be detrimental to the neighbors because it would possibly reduce the value of the property. Sue disagreed, saying that was subjective. She said it was probably detrimental because it wouldn't be in keeping with the rest of the neighborhood. That was kind of what the zoning was for, to protect individual property rights as well as the property rights to the owners as a whole. Clarence thought somewhere it said to try to be in keeping with the neighborhood. Tim and Paul thought [the modification] sounded good.

Mike suggested having a motion on the finding. Sue thought they should go through all of the findings first. Mike was concerned they would forget what they'd done. He understood her point. Joel checked that they would do each finding one at a time and then go back and vote on the package. Mike said they would vote on the motion as a whole if the findings support it. Sue said she would rather do all of the findings of fact first and then, if they found out to their hearts' content that all of the findings of facts as a whole support the variance, then they could state changes and vote.

LaDana observed that, as they started through these findings, they might want to change a finding that they just made. When staff wrote these up, that happened. Mike agreed. Lita suggested penciling in what the Board did with each finding on her copy of the staff report so each could be easily repeated.

For **finding a**, the Board added '*however it would not be in keeping with the surrounding neighborhood*' to the end of the existing finding.

Clarence suggested adding that it would be detrimental to the property values and Sue said just 'potentially detrimental to the area'. Joel restated this back. Lita asked about the wording on this addition. Mike gave another rendition. Sue suggested they leave the last part out, and the Board agreed. Mike thought 'potentially' would be hard to defend. Sue and LaDana commented on 'detrimental'. Mike thought they could definitely say the original change.

Mike moved on to finding b, where failure to approve the variance will result in undue hardship because no reasonable conforming use of the lot or parcel is possible without a variance. Tim and Sue said this was true. Clarence asked if it was reasonable to build a 2-bedroom cabin where the rest were larger homes. Sue said you had a square footage that you could work with. It didn't say what you had to build there, as far as a 2-bedroom home. Clarence said he was using that as an example to ask if it was reasonable. Mike said if you were going to talk about reasonableness, it went back to the statement they added. Would it be in keeping? Was it reasonable to force someone to build something that wasn't in keeping in the neighborhood and what was going on in that neighborhood? Tim said no, it was the same thing. Mike agreed that it ended up being the same thing in this case. If they were going to go that route, then they were going to force them to build something that didn't match the neighborhood. Clarence suggested you could also say based on the value of the lot, it wouldn't be reasonable to build something like some little tiny place on a lot which was that expensive. Sue pointed out that could change. Forty years ago, the lot wouldn't have cost this much. In fifteen or twenty years from now it could be different. Clarence said it might be reasonable for him to have a little two-bedroom house with just his wife and him. It might not be reasonable for somebody with a bigger family. Tim said it was just the same as finding a. Mike said it was kind of the same, but by what the Board did to finding a, it made finding b almost nonfunctional. Board members agreed. Tim said failure to approve the variance within [inaudible] was true. See finding a.

LaDana asked if they could reasonably use the lot without a variance. Robert said it depended on where your definition of 'reasonable' fell. Mike said they were now defining reasonable as not building a home that was not in compliance or not in conformance with the rest of the neighborhood and the homes that were in the neighborhood. They were forcing something that was different than what the community had been doing, and they were defining that as kind of unreasonable. Hans said the spirit of the zoning wasn't to restrict somebody to do a smaller house when the neighbors in the same subdivision had bigger homes.

Joel said the spirit of the zoning was to tie your lot coverage to your slopes. You were saying 'reasonable' was 3800 square feet of living area plus a 3-car garage. LaDana added the driveway. Hans said everyone else had a paved driveway. To say that you didn't include the driveway because people did it anyway, wasn't it better to give the coverage now rather than having an illegal driveway there in 3 years? Joel and Mike said you didn't plan on illegal activities. Hans said it was better to have it all in. LaDana said that technically [people] came in and asked to pave their driveway when they were ready

to do it. Mike said then you ask for another variance. Joel said it was better to ask for what you wanted up front.

Mike noted that they hadn't come to a conclusion on finding b. LaDana suggested they move on to the other findings and come back to finding b. Sue agreed.

Mike read the heading for finding c: the alleged hardship has not been created by action of the owner or occupants. He said the hardship was resulting from the topography of the lot. Clarence said by the same token, he didn't have to buy the lot. Mike added he didn't have to build on it, or build a big building on it. They were just saying the facts according to the law. They've already stated it was unreasonable to force a smaller building that didn't match the neighborhood and what the rest of the buildings were in the neighborhood. Tim said [the applicant] wanted to buy the lot and build a home on it. Hans said that in that same finding c, it said that the applicant could adjust the slopes on the property but that it didn't seem to be a practical method. The alternative would be that they were using the variance process to not fill it in and not bring a bulldozer out there and smash it, so they were helping. Mike repeated that if they were filling the coulee, he would vote no.

Because of what it was and what they were trying to do, Mike was aiming for the condition that they were going to demand an engineered plan in the terms and conditions on how they were going to build where they were and make this a stable piece of property. He believed that the spirit of the zoning was that if you were on property that had these kinds of slopes or this much area, you weren't going to build a house that wouldn't be stable. Hans said that was the fear. Mike said it would be good practice to do an engineered plan for how they were going to stabilize that piece of property that they could actually build on. Hans said he planned on that. They also needed to have that passed by a civil engineer for earthquake.

Sue read the first paragraph of finding c. This was the end of the story, although you could go on to the rest of it. LaDana said there was an applicant submitting this and that was what was weird. Mike pointed to the last sentence of finding c, and it was 'self-imposed' that was the issue here. They wanted to buy a lot that they knew had restrictions, and they wanted permission to do something different. That was where they were at now. LaDana noted again that Planning staff gave them a letter, which Stan Petersen had, and Hans walked into the office with the letter that said what this limitation was. The limitation was out there. Hans said his client was looking for a lake lot, and it was hard to find a buildable lake lot to replace it. This one was close to town and services. It was right on a paved road and was a nice lot. Sue said she didn't care about that. They could still buy it and build what's exactly there. Not being able to find another lot wasn't a swaying factor for her.

Going back to the Board discussion, Sue considered that they dropped the last sentence or paragraph. She checked that the person interested in the variance wasn't the owner of the lot. LaDana clarified that someone else was submitting the application. It didn't specifically say the applicant on here. It said the owner. If Stan Petersen was submitting

it, they would review it the same. Sue asked if the Board approved this and gave a variance to the owner for the property, would the variance run with the property. LaDana pointed to the site plan. If he wanted to do something different, he would have to come in for some other approval. Sue said they were being asked to allow a variance on this property based on a suggested plan. Should John Kasson decide not to purchase this property, would the variance still be there if the Petersen Family Trust decided to pursue that plan on this parcel? Mike said unless they wrote that as a condition. Joel said it would most likely be granted to the owner based on what was being submitted. Petersen could sell it to someone else, and they would be bound by the approval of the parameter of that plan. Sue said that it kind of went with the parcel. Multiple members spoke.

Mike said they could condition it that the variance applied only to the applicant, John Kasson, and this plan, and that it would need reapproval if someone else wanted to buy the property. Sue said she was just getting to the point where if they dropped the last paragraph of finding c, would that be enough finding of fact in the affirmative, and LaDana had said this was for the applicant not the owner. That was what she was trying to clarify. Joel said the owner authorized the applicant to pursue this. The owner was basically a co-applicant. Sue and Mike both concluded that the second paragraph of finding c could be dropped. Sue also suggested dropping just the last sentence. Mike thought the sentence that began at the end of pg. 16 and continued on pg. 17 actually set the stage for the final sentence. He thought the best way to do it would be to strike the whole paragraph.

Lita checked that the Board was informally saying that **for finding c, the second paragraph would be dropped.** Mike added that he might suggest some changes to the first sentence of that one, but he'd do that later.

Mike read the heading for finding d: Approval of the variance will not create a nuisance or have an adverse affect on implementation of the plan. He read also from the staff findings. Tim thought they'd have to deal with that in the conditions. Mike agreed. This was part of the engineering plan. Paul pointed to condition #8 on pg. 20. LaDana said that was only if they were disturbing the slope. Mike said that was what #8 was talking about. They were going to add a condition regardless that there was going to be an engineering plan. LaDana remarked that was discussed under condition #4, but that was the one that was coming from the subdivision approval. Tim said they wanted something more than that. Mike agreed. They would add a condition about engineering when and if they got that far. Tim thought on finding d, it would just be whatever that condition was, that approval [inaudible] have an adverse affect on the implementation of the plan, and see that condition. Mike rephrased that Tim was talking about finding d and making this okay but it was going to be conditioned on the new condition to be added about the engineering plan and what the Board was going to do to mitigate this nuisance, [inaudible] the implementation of the plan still. Tim said one of the conditions would be [inaudible] engineering plan, and then he noticed that the County already took care of this in the bottom half of the first paragraph. The Board conferred further on the location and wording. LaDana checked that Tim was talking about the runoff management plan. He confirmed, just in dealing with finding d and what it said under finding d and in the

second half of the first paragraph. He read from the last sentence of the paragraph. LaDana pointed to conditions #5 and #4. They might want to expand on that to require engineering no matter what.

Tim said he was trying to figure out how to word finding d. Sue thought that he just had. LaDana asked if he wanted to change the second paragraph. Joel suggested that they might want to eliminate the first sentence and 'for instance'. Mike mentioned conditions #4 and #5. They could reword #4 to require an engineered plan. LaDana suggested adding to it rather than rewording it, and Mike agreed. Joel said the first part of finding d was regarding a nuisance and the second part was about the implementation of the plan [inaudible]. Sue said they'd need to change the second part, too. LaDana said that was the part that was really the issue. Mike said because this was earlier than normal, because they hadn't bought the property and they hadn't started building. The Board wanted to put words in here that would basically state that prior to the issuance of the zoning conformance, these things would be accounted for, which would alleviate the unknowns here, because the Board didn't have the plans. Item #4 and #5 would have to be submitted, and #4 modified or added to, to require the engineering plan, which would then give you the ability to actually understand what would be going on for this one, and not create the nuisance they were talking about here. LaDana said this was adverse affect. That was what the second paragraph was about. Mike thought the adverse affects were mitigated by #4 and #5.

Robert asked how Mike was interpreting the word 'plan'. LaDana said it should be adverse affects on the implementation of the Polson Development Code. Mike agreed, but to not have adverse affects on the Polson Development Code, the Board was going to require the actual engineering plan for that site and the stormwater management plan prior to the issuance of the zoning conformance permit. This would alleviate the unknown on whether they were going to actually follow the Polson Development Code. Joel clarified the 'plan' referenced was the Polson Master Plan that this Code implemented. Tim thought what was throwing people off was that it was just here for an example. His answer to that was once you looked at the neighborhood, it fit in with RRZD and it was a reasonable development in RRZD. Mike checked for suggested wording. Tim suggested a second paragraph that said there is no adverse affect on the implementation of the plan in that the proposed building fits in with the zoning for RRZD. Mike suggested striking the [preexisting] second paragraph. Joel checked that the suggested language was to replace the second paragraph with 'there is no adverse affect on implementation of the plan'. Tim confirmed, because the proposed development was in the spirit of RRZD or it fits the neighborhood in the spirit of RRZD.

Mike thought they'd come to an agreement that the first part of finding d, through 'for instance' would be struck, and the paragraph would begin, 'The soils in this area are prone to erosion....' Sue confirmed for Lita that there were no other changes in the first paragraph. For the second paragraph, Mike confirmed that the second paragraph would be replaced as Joel said. Joel and LaDana filled in, 'There is no adverse affect on implementation of the plan because the proposed development is in the spirit of RRZD'. Joel suggested being specific about how they were going to condition it to make sure of

that, maybe the engineered plan. He suggested adding 'as proposed and as conditioned' to the sentence. He, Mike, the Board and the staff worked with the specific words. The revised finding emerged:

Finding d was amended so that the *first part of the first paragraph was eliminated through 'for instance' and the rest of the paragraph remained as part of the finding.*

The second paragraph was replaced with the following sentence: As proposed and conditioned, there is no adverse affect on implementation of the plan because the proposed development is in the spirit of RRZD.

Mike recited the heading for finding e: The variance is the minimum relief from the requirements of these regulations necessary to permit a reasonable conforming use. Clarence thought this had been covered in finding a. Mike said now they were talking about the difference between what was requested (the 5800) and the proposed plan that they knew of. Did they allow the 5800 so [the applicants] could do driveway paving or did they go back to the minimum? Sue said 4800 seemed like it was a pretty good coverage. There was 3500 square foot for the house/garage. That would be the minimum necessary to give relief. She thought the 5800 wasn't necessarily maximum but it was kind of a lot when they didn't have something in front of [the Board] to really go by. Joel said the Board of Adjustment would basically be saying a variance approval to allow X number of square feet of the lot coverage was the minimum relief necessary to permit a reasonable conforming use. Mike thought that went back to condition #2, where they would then state it. Clarence thought they should address the driveway while they were at it, and allow enough square footage to cover it. Sue thought that would be 4800. Mike asked how long the driveway was. Clarence said they wanted some patios and some other things. Hans said the neighbor's was 1440 square feet, so it was probably 70 x 20. He had another 1000 square feet of concrete as an apron in front of the garage, which was probably 30 x 35, so the neighbor, Strosahl, probably had 2440 for his driveway and garage. Hans said his numbers were from the Cadastral site. Sue said the number was something the applicants could work within. With 4800 square feet, they had the house and the garage and the apron coming in. Instead of having a big two-car driveway, they could scale it down to a reasonable means. Hans asked if decks were counted as impervious in the Polson Development Code as they were in Finley Point Zoning. LaDana answered yes.

Tim said he was in favor of paved driveways. Paul noted that they helped control runoff. Sue checked that the impervious surface coverage on the new plans was 3500. LaDana confirmed and [inaudible] was going to be part of the driveway. Sue continued that there was 3500 for the garage and house footprint, and another 1300 or so for the driveway. Hans said there would also be an apron in front of the garage, and those were usually 500 square feet minimum. The apron was where they'd be pushing the 5000. It would be plus or minus 2000 square feet with an apron and a driveway if you were to hard surface it. He was concerned he would end up within 100 square feet and have to drop a deck or come back to amend it to get the deck. Mike said if you took the 3500 and the neighbor's average of 2400 by the Cadastral or what Hans mentioned, and that took them to 5900

square feet. Sue noted that didn't seem like the minimum relief necessary; you drop a deck or make it smaller. They didn't even have plans to approve to say can you modify this or that. Mike said 3500 plus 500 took to 4000. On here it talked about no more than 4241 square feet. Sue said you could go up to 4800 and you could consider a paved driveway. LaDana noted the 500 square feet was a guess based on what the site plan was showing.

Tim said for him, it was part of the stormwater runoff management plan, and having one that works for 5800 square feet. The issue with impervious surface was runoff. If you mitigated that with your stormwater runoff plan then he wasn't as concerned about the actual impervious surface. Clarence said he was also talking about an apron in front of the garage, not only the driveway, which you had to have so you could [inaudible]. Paul thought it was in keeping with the neighborhood. Mike said the request was for 10%, which was 5886 square feet. Should the Board stick with that or modify it? Paul, Clarence and Tim thought they should stick with it. Mike asked if the Board believed this was the minimum relief. Paul thought that in the spirit of stormwater management, it was. In those kinds of soils out there with a gravel driveway even if you put in a big, deep bed, you really didn't control where that water was going. With a paved driveway, you knew what you were doing with it and it had been engineered, and the engineer said it worked.

LaDana asked what the Board wanted to see developed. If you paved the driveway, built the garage and built the residence, did [the Board] want to see additional impervious surface coverages beyond that or did they want their approval to be specific to those three things, so the applicant couldn't come in and build something else? Clarence asked if they were contemplating something like cement patios. Hans said those were directly under the decks. Those were one and the same. LaDana explained that previously when Hans discussed the proposal with the Planning Dept, he talked about a boathouse down by the lake. Did the Board want that to be allowed? Sue rephrased the question: did the Board want this to be open-ended. Mike said no. LaDana said if they specifically wanted the house, garage, parking and driveway to be associated with this, they should specifically say this so the applicant didn't build something else. Joel gave an example if [the applicant] changed his mind about paving the driveway, and wanted to gravel part of that and build a boathouse. The Board wouldn't want to allow that.

Sue said that wasn't what she felt was being asked. Mike agreed. He believed this proposal was for this site plan for this home: the home, garage and driveway. LaDana noted that there was an open-ended thing that she put in there for patios and other accessory structures. Sue asked how to make it say that this variance was for the minimum. Hans suggested saying it would be tied to the application and the zoning conformance permit. Sue listed home, parking areas and driveway. Hans said when he brought in the packet, it was for lot coverage for the house. Mike suggested adding a statement like they put in the other finding, 'as proposed and conditioned' and go back to condition #2 and allow 4886 square feet for the garage, house and driveway, and no other structures. Sue suggested adding 'to a maximum'. This was the minimum relief for up to a maximum coverage of 5800 square feet for house, garage and paved driveway. Should their plans come in under, that's fine or better. It wasn't like they could manipulate this to

come in at 4500 and have another 500 or 1000 square feet to do other things. That would be what the Board thought they were asking for, not things in the future, which would be the minimum relief.

LaDana said [the applicants] should be submitting the plan of what they needed so the Board could approve it. Mike and Paul said the boathouse would be another issue. Sue added that another patio or deck, another parking pad or a guest house would be another issue. It was the minimum relief. Joel said the Board might want to pin it down a little more in condition #1. In the findings, you would make a positive finding based on the number, and then you'd decide on the package as a whole. Mike thought this was the minimum. Joel said it was based on the plans that they submitted. Mike repeated this was the minimum based on the plans submitted. This was what the Board could give them in the conditions and terms, such as in condition #2 where they talked about the square footage they were going to allow on this. They'd put that down and then add to that the other conditions of limiting it to the house, garage and driveway. That was the limit: no other structures. They could put that in there in quotes if they wanted. They'd have to work on the other one later.

Joel gave out a sentence for the Board to kick around to replace finding e: The Board of Adjustment finds that 5886.6 square feet of lot coverage based on the plans submitted with the house, garage and driveway is the minimum relief from the requirements of the regulations necessary to permit a reasonable conforming use. Mike liked that. LaDana asked about the number. Joel said he took it off the front page. Mike clarified that all of finding e was stricken, and the Board would add the sentence that Joel just said. Joel commented he didn't know if the Board decided on that number but that was going to be part of the final decision.

Joel restated the sentence and Mike added decking, due to its inclusion in the very first paragraph of the staff report document. Clarence checked that decking was considered impervious surface. Joel explained that it met the definition of impervious surface. LaDana observed that there was also concrete underneath it. Lita reread the sentence and the Board and staff fine-tuned it, modifying in particular the phrase that was originally 'house, garage and driveway' to read 'a house, attached garage, decking and driveway (which may be paved)'. Joel said they hadn't faced the calculations on exhibit 2, and it said gravel parking and a driveway, but [Hans] was saying he wanted that extra for at least part of the driveway. LaDana said he'd have more because the plan here was 3500. That was for the house and the garage. Joel added a few more words saying 'a variance to allow'.

Finding e then read: *The Board of Adjustment finds that a variance to allow 5886.6 square feet of lot coverage based on plans submitted, which include a house, attached garage, decking and driveway (which may be paved) is the minimum relief from the requirements of these regulations necessary to permit a reasonable conforming use.*

Sue didn't understand why they left out the paved part of the driveway, putting in only 'which may be paved'. Joel said the plans didn't show it paved, so they were saying it

may be paved. Someone said that was what the applicant said the extra was for it, so that was what happening. LaDana said if they didn't have enough coverage for that, he might not be able to pave it. Joel said their condition would lock it into a number. Sue saw that this was where they locked it in, so then if they didn't have enough they would cut back on something. They couldn't exceed this. Joel said if they came in with a gravel driveway and a 5880 square foot house, staff would say it wasn't in conformance with the plans, and apply condition #1.

Mike intoned the heading of finding f: Additional findings may be required for variance in airport safety zones and shoreline buffers. He continued into the findings as written. The first paragraph was exact. The second paragraph was where the Board would need to do work. The Board was demanding that the project would be in compliance with this if the runoff management plan was actually submitted and approved. LaDana added the engineered plan, and Mike agreed. LaDana suggested that the Board might be able to work with what was in the last sentence of the written finding. It sounded like the Board was saying this was a reasonable request if they submitted the runoff management plan [inaudible] and the Board was including conditions. Paul referred to the first sentence of that. Joel said it would probably be something that talked about an issued plan, construction on the slope, removal of vegetation on the slope, increased erosion, slope stability, wildlife and wildlife habitat. Basically the group needed to address 'additional findings may be required for variances and shoreline buffers'. Mike observed it said 'the Board has determined that the plan is reasonable in accordance with the proposed conditions that a runoff management plan and an engineered plan be submitted prior to...' and ran out of words. LaDana suggested 'issuance of a zoning conformance permit' and Mike affirmed. Sue added 'to demonstrate the additional lot coverage will not impact the shoreline buffer or Flathead Lake'. Joel asked who would review and approve the plan. LaDana suggested the staff and Mike said it would normally be the staff.

Mike summarized that for finding f, the first paragraph would stay and the second paragraph would change. Joel, Mike and Sue teamed up provide the change as: The Board of Adjustment has determined the proposed plan is reasonable in accordance with the proposed conditions that a runoff management plan and engineering plan be submitted and approved by the Lake County Planning staff prior to issuance of the zoning conformance permit to demonstrate the additional coverage will not impact the shoreline buffer or Flathead Lake.

Sue asked about the sloughing and where that should be considered. Mike said he didn't want to see slumping. People said the engineered plan would address that. Joel said [inaudible] looking for mitigation for erosion, slope stability, wildlife, wildlife habitat, the [inaudible] of the shoreline.

Mike introduced finding g, with the heading that conditions may be attached to the approval of any variance. LaDana suggested modifying the last sentence such that they changed it to 'the conditions and terms that are appropriate are included on pg. 19-20'. Mike agreed that the rest wasn't needed. Joel thought it wouldn't refer to pg. 19-20 per se. Mike pointed out these were no longer potential terms and conditions. They were real

terms and conditions. Sue suggested 'conditions and terms that may be appropriate are included'. Joel tuned this to 'that have been found appropriate'. Mike appended 'are included in this report'. LaDana observed they weren't in this report. Sue suggested 'conditions and terms that have been found appropriate are included'. Mike thought that was good enough. LaDana suggested 'conditions and terms that have been attached to this approval'. Sue liked that better.

Finding g was revised to say: *Conditions and terms have been attached to this approval.*

Clarence remarked that they would really have to read the minutes.

LaDana mentioned that they still weren't done. Mike reminded that they had to change finding b. He asked if the Board wanted to modify the conditions prior to finding b. LaDana thought the conditions were probably pretty good. Mike said #2 would need to be modified with additional words.

Mike returned to finding b and the definition of reasonable. Tim said 'failure to approve the variance will result in a hardship due to the unique nature of the lot in relationship to...', that it will not fit into the neighborhood. That had been their argument. Due to the unique nature of the lot and the use of the average slope in determining lot coverage would not allow the development of the home that would fit into the neighborhood. Sue was uncomfortable with that because then someone else could come and say that now you were changing the definition of usual slope. That could be used against them at some point. Tim said he probably didn't say it very well. He asked if she saw what he was trying to say. Sue did. Tim confirmed when asked that he was just trying to say it was due to the unique nature of the lot and the neighborhood. He was all for haiku whenever possible. Joel checked that he was saying anything less than 5886.6 square feet would not be reasonable. Various Board members agreed. Mike thought they had it. He laid out 'the Board of Adjustment has determined that failure to approve the variance request will not be reasonable given the unique nature of the lot and the neighborhood', and blah blah blah. Sue asked where the hardship would fall. She suggested 'failure to approve the variance will result in undue hardship due to the unique nature of the lot and its location'. Joel said it was relative to any reasonable use of the lot is possible without that much. Mike tried out 'failure to approve the variance will result in undue hardship and will not be reasonable given the unique nature of the lot and the neighborhood'. Clarence thought that sounded good.

Mike started from the beginning of **finding b**: *The Board of Adjustment has determined that failure to approve the variance will result in undue hardship and not be reasonable given the unique nature of the lot and neighborhood.*

Mike landed on pg. 19, condition #2, which he wanted to change. LaDana and Sue mentioned the engineering one. Mike asked if that would fit in condition #1. LaDana said #1 was just standard language. Mike noted they could put the engineering piece into #4.

For condition #2, Mike initiated the condition as, 'This approval allows for a maximum lot coverage of 5886.6 square feet...' Sue added 'or less'. Joel pointed to 'maximum lot coverage' and Mike said that implied 'or less'. Mike wanted to put in 'to include the home, the attached garage and the driveway if paved'. Sue thought they were saying they would give this 10% coverage for a paved driveway, a house with attached decking and attached garage. That was what they were approving. If they didn't specifically say paved driveway and the applicants decided not to do a paved driveway, 'if paved' would still leave this open to the 5886. They could exchange coverage, and build an accessory building. LaDana suggested they could say it was limited to what was shown on the site plan. She didn't know how compatible that was with the other site plan. Sue said they could say a house with attached garage and decking and paved driveway. Hans said he'd have to pave the driveway, so he'd have to take that out of the square footage for the house. That meant he could use excess footage on the house. Sue said her understanding was that was why he was asking for this coverage. Hans said he would have to pave the driveway, and then he had to take the 2000 square feet off the driveway and maintain the house at 3500. Sue affirmed. Clarence said he couldn't build something else, like an outhouse. Hans doubted he could get an engineer to sign off on one of those. Lita recited the revised portion of the condition, with an et cetera for the remaining portion. Joel inquired if the Board wanted to stress 'maximum'. LaDana checked about the et cetera, and Mike concurred. Lita expanded et cetera as 'as approved by the Board of Adjustment. Sue and Mike directed for 'maximum' to be bolded or underlined.

After further rumination, the first sentence of **condition #2** read: **This approval allows for a maximum lot coverage of 5886.6 square feet to include the home, attached garage, decking and paved driveway as approved by the Board of Adjustment.** (The second sentence continued to read: **Any additional lot coverage beyond this amount requires additional review and approval by the Board of Adjustment.**)

Mike introduced condition #4 for changes. Sue responded that an engineered plan must be submitted. LaDana observed that this condition was specifically coming from the subdivision approval. This was the exact wording from that, so they didn't really want to change that. They might add another sentence, but she recommended that they didn't modify that existing sentence. Joel said they'd have to say something about the shoreline buffer. Paul read a portion of the existing condition. LaDana explained that the Commissioners put that into the subdivision approval. Mike thought they could add a sentence after that, almost mimicking what they did earlier about the lakeshore buffer, that they were going to do these conditions and have an engineered plan and this water runoff management plan to mitigate impact on the lake. Take that and just copy it over to this. Sue asked about putting it in #5. LaDana said the runoff management plan had to be engineered so in the end, it all got tied together.

Joel pointed also to finding d and mitigating the nuisance factor against the implementation of the plan. Mike referred to finding e and finding f. He asked how that read, and Lita recited it back to the listeners. Mike thought they could start at the engineered plan and copy that directly to the new sentence at the end of condition #4,

beginning, ‘An engineered plan will be submitted....’ Condition #5 took care of the runoff management plan so they were good. LaDana inquired what #4 should say. Mike said it would say exactly what was already there, plus a new sentence that said, ‘An engineered plan will be submitted and approved...’ with exactly what they’d already written [for part of finding f] added.

Lita listed the sentence to be added to the end of the preexisting condition #4 as ‘An engineered plan will be submitted and approved by the Lake County Planning staff prior to issuance of the zoning conformance permit to demonstrate the additional coverage will not impact the shoreline buffer or Flathead Lake’. Mike said that was what he wanted. Joel asked about the nuisance and adverse affect on implementation of the plan. This was in finding d. It talked about adjacent properties being affected, soils prone to erosion and rapid runoff. Because of what was written in the findings, Mike thought they were implying that if this was done, they were actually mitigating the nuisance also. Joel suggested they have some reflection back to the findings in the condition. Mike said they could refer back to findings d and f. He had the sentence read again, and to the end of the sentence, he added ‘in compliance with findings d and f’. LaDana suggested that they add ‘reviewed’ after submitted, so it would say submitted and reviewed and approved by Planning staff. Joel observed that Planning staff didn’t submit it. LaDana agreed. Joel detailed that currently it said submitted, reviewed and approved by staff. It was submitted, and then reviewed and approved by staff. He thought it would be clearer to say submitted by the applicant, and reviewed and approved by the staff.

The sentence to be added to the end of condition #4 was rewritten as ‘*An engineered plan will be submitted by the applicant and reviewed and approved by the Lake County Planning staff prior to issuance of the zoning conformance permit to demonstrate the additional coverage will not impact the shoreline buffer or Flathead Lake in compliance with findings d and f*’.

(Note the correction in the portion of wording from finding f that was to match exactly to a portion of the new sentence for condition #4. Earlier, Mike summarized that for **finding f, the first paragraph would stay and the second paragraph would change**. Joel, Mike and Sue teamed up to provide the change as: The Board of Adjustment has determined the proposed plan is reasonable in accordance with the proposed conditions that a runoff management plan and engineering plan be submitted and approved by the Lake County Planning staff prior to issuance of the zoning conformance permit to demonstrate the additional coverage will not impact the shoreline buffer or Flathead Lake. With the correction made during the discussion of condition #4, **the second paragraph of finding f became: *The Board of Adjustment has determined the proposed plan is reasonable in accordance with the proposed conditions that a runoff management plan and engineering plan be submitted by the applicant and reviewed and approved by the Lake County Planning staff prior to issuance of the zoning conformance permit to demonstrate the additional coverage will not impact the shoreline buffer or Flathead Lake.***)

Clarence checked if there was a Planning Board meeting at 7pm. Joel answered no. They could continue going.

Paul checked on 'does not qualify' in the first paragraph on pg. 19. Mike said they'd done that before and [the Board] changed their minds. He pointed to where the paragraph said 'should the Board of Adjustment make alternative findings' which they did.

Motion made by Tim McGinnis, and seconded by Paul Grinde, to approve the variance with the Board of Adjustment's findings of facts, and the terms and conditions as amended. Motion carried, 4 in favor (Clarence Brazil, Mike Marchetti, Tim McGinnis, Paul Grinde) and one abstention (Sue Lavery). (See end of minutes for the Board's findings listed, and amendments to conditions #2 and #4.)

Mike made a request to receive the draft minutes early.

OTHER BUSINESS (6:30 p.m.)

Joel spoke briefly about the recently adopted Floodplain regulation. There were items submitted for next month's meeting.

Mike Marchetti, chair, adjourned the meeting at 6:35 p.m.

Summary of findings as rewritten and approved by the Board of Adjustment to address the variance request are as follows:

a. The need for a variance results from physical limitations unique to the lot or parcel on which the variance is requested.

The subject property does have physical limitations that are unique to the lot. The northwestern corner of the lot is relatively flat while the remaining portions contain slopes which are associated with a drainage area and the portion of the lot located near Flathead Lake. Although the topography does limit the type of development allowed in compliance with the Polson Development Code, it does not total restrict the ability to develop the parcel in compliance with those regulations, however it would not be in keeping with the surrounding neighborhood.

b. Failure to approve the variance will result in undue hardship because no reasonable conforming use of the lot or parcel is possible without a variance.

The Board of Adjustment has determined that failure to approve the variance will result in undue hardship and not be reasonable given the unique nature of the lot and neighborhood.

c. The alleged hardship has not been created by action of the owner or occupants.

The hardship is not created by the owner or occupant considering it results from the topography of the lot. This parcel has existed in its current state since the subdivision was developed and the owner has no control over the natural slopes that are currently present. Although the applicant could adjust the slopes on the property by filling and grading, this does not seem to be a practical method considering there is a significant gradient change varying between approximately 15 and 20-feet. In addition, filling and grading could impact properties upstream if the drainage area no longer exists.

d. Approval of the variance will not create a nuisance or have an adverse affect on implementation of the plan.

The soils in this area are prone to erosion, rapid run-off, etc. and no information has been submitted to demonstrate that Flathead Lake or adjacent properties will not be impacted. However if the property is developed in compliance with the subdivision approval and a runoff management plan is developed that does not result in impacts to the lake or adjacent properties, granting the variance is not expected to create a nuisance.

As proposed and conditioned, there is no adverse affect on implementation of the plan because the proposed development is in the spirit of RRZD.

e. The variance is the minimum relief from the requirements of these regulations necessary to permit a reasonable conforming use.

The Board of Adjustment finds that a variance to allow 5886.6 square feet of lot coverage based on plans submitted, which include a house, attached garage, decking and driveway (which may be paved) is the minimum relief from the requirements of these regulations necessary to permit a reasonable conforming use.

f. Additional findings may be required for variances in airport safety zones and shoreline buffers.

There are no airport safety zones located on or near the property. Flathead Lake lies adjacent to the eastern boundary of the property, a shoreline buffer is required to be maintained. The shoreline buffer zone extends inland 50-feet from the highwater mark of Flathead Lake.

The Board of Adjustment has determined the proposed plan is reasonable in accordance with the proposed conditions that a runoff management plan and engineering plan be submitted by the applicant and reviewed and approved by the Lake County Planning staff prior to issuance of the zoning conformance permit to demonstrate the additional coverage will not impact the shoreline buffer or Flathead Lake.

g. Conditions may be attached to the approval of any variance.

Conditions and terms have been attached to this approval.

Changes to conditions #2 and #4 as rewritten and approved by the Board of Adjustment to address the variance request are as follows. (Other conditions and terms were approved as suggested in the staff report):

Condition #2: This approval allows for a **maximum** lot coverage of 5886.6 square feet to include the home, attached garage, decking and paved driveway as approved by the Board of Adjustment. Any additional lot coverage beyond this amount requires additional review and approval by the Board of Adjustment.

Condition #4:

- A)** The construction of a primary residence, or the removal of any of the native grasses, trees, or brush from the portions of the lots, on or within 10 feet of a slope 25 percent or greater is prohibited unless an engineered plan is submitted and approved by the Lake County Planning Department which addresses sewage disposal, erosion, slope stability, impacts on wildlife and wildlife habitat.
- B)** An engineered plan will be submitted by the applicant and reviewed and approved by the Lake County Planning staff prior to issuance of the zoning conformance permit to demonstrate the additional coverage will not impact the shoreline buffer or Flathead Lake and in compliance with findings d and f.